



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0930]

RIN 1625-AA09

Drawbridge Operation Regulation; Shark River, (South Channel),
Avon Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation that governs the opening of the S35 Bridge, mile 0.9, across Shark River (South Channel) at Avon Township, NJ. The existing regulation contains a drawbridge operation schedule for the S35 Bridge. However, the existing bridge was modified in 2006 from a movable bridge to a fixed bridge. Since the bridge is no longer a movable bridge, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2012-0930 and are available by going to <http://www.regulations.gov>, inserting USCG-2012-0930 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District; telephone 757-398-6557, e-mail James.L.Rousseau2@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the S35 bridge that once required draw operations as outlined in 33 CFR 117.751 was modified from a movable bridge to a fixed bridge. As such, the bridge no longer opens for the passage of vessels. Therefore, the regulation is no longer applicable and should be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. Since the purpose of this rule is to remove the S35 Bridge operation requirements under 33 CFR 117.751, the Coast Guard is removing a regulatory restriction currently imposed on the public. As such, the Coast Guard finds that good cause

exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridge has been a fixed bridge for 6 years and this rule merely requires an administrative change to the federal register, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway.

B. Basis and Purpose

On June 25, 1999, a Coast Guard Bridge Permit (1-99-5) was issued to the New Jersey Department of Transportation (NJDOT) to replace the existing bascule bridge, which carries S35 over Shark River (South Channel) at Avon Township NJ, with a new fixed bridge. NJDOT completed construction for a new fixed bridge in June 2006. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, in 33 CFR 117.751 that contains an operating schedule pertaining to the former drawbridge.

C. Discussion of the Final Rule

The Coast Guard is changing the regulation in 33 CFR 117 without publishing an NPRM. The change removes the regulation governing a movable bridge that was modified to a fixed bridge. Specifically, this rule will remove the section of 33 CFR 117.751 that refers to the S35 Bridge at mile 0.9, from the Code of

Federal Regulations since it governs a bridge that is no longer able to be opened.

D. Regulatory Planning and Review

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Analysis

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13653, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We reached this conclusion based on the fact that a special operating regulation exists for movable bridges and as this bridge has been modified to a fixed bridge, the regulation is unnecessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: None. Due to the fact that the bridge has been a fixed bridge for 6 years, this final rule will not have a significant economic impact on a substantial number of small entities.

3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in

the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read

as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise the introductory text and paragraph (a) of §117.751 to read as follows:

§ 117.751 Shark River (South Channel)

The draws of the S71 Bridge, mile 0.8, and the Railroad Bridge, mile 0.9, both at Avon, operate as follows:

(a) The bridges operate as one unit. The owners shall provide signal systems so connected that the operator of either bridge may simultaneously notify the operator of the other bridge. The operator of the first bridge to be passed shall be responsible for observing the approach vessels, for receiving and acknowledging signals, and for coordinating the opening of the other draw.

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DATED: October 25, 2012

Steven H. Ratti
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

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